

THE HONOURABLE SRI JUSTICE V.ESWARAIAH

Date:31-3-2006

WRIT PETITION No. 27446 OF 2005

BETWEEN:

Mohd.Basheer Khan

...Petitioner

And

The Commissioner, Nirmal Municipal Council, Nirmal, Adilabad
District and another.

...Respondents

ORDER:

The petitioner seeks to issue a writ of mandamus, directing the first respondent to place the written representation of the petitioner before the Municipal Council, Nirmal and take appropriate steps as contemplated under Section 17 of the Municipalities Act.

Heard the learned counsel appearing for the petitioner as well as the learned standing counsel appearing for the first respondent.

It is stated that the petitioner is the voter of Ward No.21 of Nirmal Municipality and the second respondent was elected as Councilor from Ward No.17. It is stated that under Section 13-B of the Andhra Pradesh Municipalities Act, 1965 (for short “the Act”), if a person having more than two children on the date of commencement of the

amendment to Sec.13-B (inserted by A.P. Amendment Act 17 of 1994), he get a disqualification. But, however, in addition to the two children, if any additional child is born within one year from the date of the commencement of Andhra Pradesh Municipalities (Second Amendment) Act, 1994, he will not incur any disqualification.

It is the case of the petitioner that after the said amendment, the second respondent had an additional child after 1995 and therefore, the petitioner filed a representation dated 28-10-1995 before the Commissioner, Nirmal Municipality informing that the second respondent has incurred disqualification and requested to take appropriate steps for deciding the second respondent as disqualified.

It is stated that along with the said representation, the petitioner enclosed a copy of the letter dated 21-10-1995 addressed by the Head Mistress, Nirmal English Medium High School, Nirmal to the local M.L.A., stating that the first child of the second respondent was born on 30-7-1994 and is studying 6th class. As there is one year grace period to have a child from 1-6-1994, he will not get any disqualification if a third child is born till 1-6-1995. It is stated that after 1-6-1995, the second child was born on 30-7-1995 and he is studying 5th class and third child was born on 22-3-1998 and he is studying third class.

It is stated that pursuant to the said representation, the Commissioner, Nirmal Municipality issued a notice dated 16-11-2005 to the second respondent to submit his explanation within 7 days with regard to the incurring of disqualification as to why action shall not be taken disqualifying him under Section 13-B of the Act. Having issued a notice, no action has been taken.

The first respondent filed a counter, stating that after serving the notice, it was proposed to place the same in the meeting of the council, but the same has not been placed. It is stated that the said representation will be placed before the council in the next meeting.

It is the case of the petitioner that unless the said matter is placed

before the council and the council takes appropriate decision and directs the Commissioner within two months from the date of placing the matter by the Commissioner, the petitioner may not be able to take appropriate action for applying to the District Judge to decide the question of disqualification of the second respondent.

As it is stated in the counter that the matter will be placed before the council in the next meeting, the first respondent is directed to place the same before the council in the next meeting to consider the representation of the petitioner and to take appropriate decision in accordance with law.

Accordingly, the writ petition is disposed of.

V.ESWARAIAH, J

Date: 31-3-2006.

Shr.

-